

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2293 of 1996

to

FIRST APPEAL No 2298 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAND ACQUISITION OFFICER

Versus

THAKOR BABUJI GALAJI

Appearance:

1. First Appeal No. 2293 of 1996
MR AJAY R MEHTA for Petitioner No. 1
MR MB GANDHI for Respondents No. 1-3
MR GHANSHYAM AMIN for Respondents No. 1-3
MR AD OZA, GP for Respondent No. 4
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CORAM : MR.JUSTICE J.N.BHATT

and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. In this group of six appeals u/S. 54 of the Land Acquisition Act, 1894 (Act) common questions arise from common judgment and award of the Reference Court in LAR No. 301 to 306 of 1999 dated 30/11/1995, therefore, they are being disposed of by common judgment.

2. A few material facts giving rise to this group of six appeals may be highlighted at first. The appellants have challenged the common judgment and award as stated above whereby the market value came to be fixed at the rate of Rs.90/- per sq. mtr. in respect of lands acquired for the public purpose of the ONGC situated at village Saij, Taluka Kalol of Mehsana District, pursuant to the notification u/S. 4(1) of the Act published on 6/1/1984 and followed by notification u/S. 6(1) of the Act published on 24/11/1986. After observing necessary formalities u/S. 9 and hearing the claimants, the Land Acquisition Officer by his award dated 6/10/1980 offered the compensation of Rs.6/- per sq. mtr. The original claimants being dissatisfied by the award of the Land Acquisition Officer sought reference and accordingly the references were made to the District Court, Mehsana.

3. The Reference Court by common judgment, after considering entire documentary and viva-voce evidence and mainly relying on the award of Court in LAR Case No. 312/1990 dated 31/7/1995 Exh.26 enhanced the market valuer of the lands under acquisition at the rate of Rs.90/- per sq. mtr. against the claim of Rs.200/- per sq. mtr. of the claimant. Being dissatisfied by the award of the Reference Court, the Special Land Acquisition Officer, ONGC has challenged its legality and validity in this group of six appeals.

4. The claimants placed reliance on documentary evidence which is highlighted in the following tabular form :-

Exh. Nature Particulars Similarity Remarks
No. of proved by
evidence

20. Previous Sec.4 - Deposition of Post Noti.
Judgment 15/1/86 claimant Same village
in LAR M.V. Kantiji Saij - Award
252/88 Rs.150/- Mathadhaji has become
sq.Mt. Exh.No.19 final as no
Same village appeal
Saij preferred.

21. Previous Sec.4 - -do- Sec.4 Noti.
judgment 28/7/83 6 months prior
in LAR M.C. than that in
69/86 Rs.80/- the present
Sq. Mtr. case.
Same Award has
village. become final as
not appealed
against by the
same acquiring
body.

26. Previous Sec.4 - Kantiji Post Noti.
judgment 1/4/86 Bhupatji Claimants rely
in LAR M.V. Exh.25 upon it only
312/90 Rs.80/- to show that
Sq.Mtr. there was no
Confirmed rise in price
by SC and not for
Same determining
village. market value.

19 Deposi Samilarity Appellants
& tion of of acquired have not
25 claima- land that produced any
-nts Exh.21 other evidence
proved by to show that
deposition. the lands are
not similar or
there was rise
in price.

18 Valua- Govt.Appro Deposition of
tion ved valuer of B.R.Rami
Report has valued Govt. Approved
the land Valuer.
at Rs.135/-
sq. mtr.

Relying on the aforesaid evidence mainly it has been contended on behalf of the claimants that the fixity of market value for assessment of the compensation by the Reference Court in this group of matters is quite justified; whereas on behalf of the appellant Acquiring Body - ONGC vehemently reliance is placed on the decision of this Court in First Appeal No. 7317 of 1995 and allied matters decided on 12/10/1998. In that it has been contended that the Reference Court has committed error in assessing market value at Rs.90/- per sq. mtr. placing reliance on earlier judgment and award in LAR Case No. 312/1990 produced at Exh.26 as well as judgment of the LAR Case No. 69/1986, whereby, an amount of Rs.80/- came to be awarded. The award in LAR No. 312/90 the appellants had filed appeals before this Court and the group of appeals as stated hereinabove came to be decided by Division Bench on 12/10/1998 fixing market value at Rs.80/- per sq. mtr. and dismissing the Cross Objections of the claimants claiming additional amount of compensation. It is further submitted that the said decision of this Court was also challenged before the Hon'ble Apex Court by filing Special Leave Petition by both the parties and the Hon'ble Apex Court by its order dated 3/11/1999 dismissed both sides SLPs and confirmed the view of the High Court in fixing the market value at Rs.80/- per sq. mtr. Since the date of notification u/S. 4(1) in that LAR Case No. 312/1990 was of 1/4/1986, whereas notification u/S. 4(1) in the cases covered in this group of appeals was issued on 6/1/1984. It was therefore, submitted that in view of the difference in the dates of notifications u/S. 4(1) of the Act and the observations made in para. 15 by the Division Bench of this Court referred hereinabove, the claimants are not entitled to more than Rs.65/- per sq. mtr. towards the market value of the lands acquired. The contention advanced on behalf of the appellant is that the award made in LAR No. 312/1990 by the Reference Court and confirmed by this Court as well as by the Hon'ble Apex Court is required to be relied upon, as the lands covered thereunder are better comparable instance than the lands covered in LAR No. 69/1986. It is in

this context the submission raised on behalf of the appellants is that the market value of the lands in question is required to be reduced from Rs.90/- to Rs.65/- per sq. mtr. for the compensation in respect of the acquired lands.

5. We are also taken through the Division Bench decision dated 12/10/1998 of this Court and particularly the observations made in para. 15. We have seriously considered the observations made by this Court in para.15 and has also gone through the entire decision relied on.

6. The main question which falls for consideration and adjudication in this group of appeals, therefore, is whether the award at Exh.21 arising out of the LAR No. 69/1986 dated 26/10/1993, could be considered for the purpose of assessing the compensation on the basis of market value or the award, Exh.26, arising out of the LAR No. 312/1990. The Exh. 21 award or Exh. 26 award of the same Court are pressed into service by both the sides. Prima-facie the submission advanced by the learned advocate appearing for the appellant placing reliance on the award Exh. 26 may appear to be captivating but not convincing.

7. The provisions of Section 23 of the Act provides for matters to be considered in determining the compensation. One of the considerations for determining the compensation for the lands acquired under the Act, the market value of the land at the date of publication of the notification u/S. 4(1) is one of the important considerations. Market value can be assessed on the basis of different modes and different patterns depending upon the circumstances and the evidence brought on record. It cannot be gainsaid that the instance in the shape of award is more reliable and dependable in fixing the market value than oral evidence and even other sale instance, as it is a crystalised documentation and manifestation of fixity of market value upon judicial adjudication. Obviously, therefore, when two such awards are pressed into service for the purpose of determining the compensation and fixity of market value, it becomes necessary to examine and appreciate as to which of them could be said to be more comparable and useful in determining the market value of the land acquired. It cannot also be denied that in view of settled proposition of law ordinarily the evidence in the form of award for the purpose of fixing market value prior to the date of notification u/S. 4(1) for the acquisition of land in question will be preferred. Again the award which has

more proximity with the lands acquired or in question will be one of the considerations. However, the submission is that the award, Exh. 26, which is subsequent to the date of notification u/S. 4(1) for the acquisition of land in question. After considering the observations which are strongly relied on by the learned advocate for the appellants of the said decision of this Court arising out of Exh. 26 award whereby Exh. 26 award is confirmed, the date of notification u/S. 4(1) in that case is of 1/4/1986, whereas in so far as award Exh. 21 is concerned, the date of notification u/S. 4(1) is 6/1/1984. The award, Exh. 21, is prior in point of time, whereas award Exh. 26 is two years later. Merely because the award Exh.26 lands are enjoying the proximity than the lands in question would not rob the Court from placing reliance on, Exh.21, more so in view of the proposition of law explained and expounded while appreciating and interpreting the provisions of section 23 of the Act in *Thakarsibhai Devjibhai v/s. Executive Engineer 2001 AIR SCW 2417*. The decision is rendered on 11/1/2001.

8. In *Thakarsibhai's* case (supra) it has been clearly expounded and propounded in para. 12 that the distance in so far as acquisition of agricultural land is concerned will not be sufficient ipso facto to prompt the Court to reduce the rate of market value. In other words, similarly situated lands away from the town or distance between similarly situated lands would not be a relevant factor. The observations made in para. 15 of the Division Bench decision of this Court, which is strongly relied on by the appellants, in our opinion, run counter to the observations made in para. 12 and the principles propounded in *Thakarsibhai's* decision (supra).

9. It would be expedient at this juncture to refer the observations made in para. 12 of *Thakarsibhai's* case (supra).

"12. As we have said above, the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Exh.16 is about 5 Kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land

is clubbed together then the area becomes large. Each land owners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Exh.16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distance from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex. 16 is about two kilometers away from it. This difference is not such to lead to reduce the fate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/- per sq. mtr. cannot be sustained."

10. In view of the evidence scrutinised, analysed and scanned by us and the latest proposition of law in relation to the provision of Section 23, which provides for determination of compensation for the acquisition of the land, we are of the clear opinion that the award of the Court at Exh.21 is more comparable and reliable than the award Exh. 26. Exh. 21 award is in respect of the lands situated in the same village like that village Saij. In other words, the land covered under award Exh. 21 arising out of LAR No. 69/1986 and the lands in question are situated in the same village Saij. Exh. 21 award is dated 26/10/1993 in which the notification u/S. 4 was issued on 24/7/1983. As per the Exh. 21 the market value is determined and fixed by the Reference Court much prior to the date of notification in the instant case at the rate of Rs.80/- per sq. mtr. The date of notification in the present case is 6/1/1984. It is, therefore, amply clear that the notification in relation to the award Exh. 21 is more than 5 months prior to the date of notification in the present group of appeals. Since the distance and the difference between

two notifications is less than 6 months, we deem it expedient to assess and fix the market value at Rs.80/per sq. mtr., same as that was fixed by the Reference Court 5 months prior to the date of notification in the present case. Therefore, the fixity of the market value at the rate of Rs.90/- per sq. mtr. assessed and awarded by the Reference Court is required to be reduced so as to make compatible with the comparable award Exh.21. Consequently, this group of appeals is required to be allowed to that extent.

11. The impugned common judgment and award shall stand modified to the extent that the original claimants shall be entitled to market value at the rate of Rs.80/per sq. mtr. instead of Rs.90/- per sq. mtr. over and above the statutory benefits including the interest on solatium, in view of the latest pronouncement of the Constitutional Bench rendered in Sunder v/s. Union of India - Appeal (Civil) No. 6271 of 1998 dated 19/9/2001, appeal shall stand allowed to the aforesaid extent. The impugned common judgment and award shall stand modified accordingly. In view of the peculiar facts and circumstances, parties are left to bear their own costs.

[J.N. BHATT, J.]

[AKSHAY H.MEHTA, J.]

* Pansala.